

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1026 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

K MOHANDAS ASHOKKUMAR

Versus

MAHESH CLOTH STORES

Appearance:

MS MAYA N BHAVNANI for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 25/02/2000

ORAL JUDGEMENT

1. Appellant (original plaintiff) filed this appeal under Section 9 of the Ahmedabad City Civil Court Act, 1961, challenging judgment and decree dated January 31, 1980, passed by learned Judge, Court No.19, City Civil Court, Ahmedabad, in Civil Suit No.1757 of 1976, whereby, learned Judge has dismissed the suit of the appellant for

recovery of Rs.10768.16 ps with 15% interest to be realised from the respondents (original defendants).

2. The plaintiff was a registered partnership firm whereas defendant No.1 was also a registered partnership firm. Jairamdas Hasanand, one of the partners of the plaintiff-firm, was running partnership firm in the name and style of Kailashchandra Tikemadas and the said firm was dissolved from July 5, 1974 and the entire concern was taken over by Jairamdas Hasanand. As per the plaintiff's case, defendant-firm had to pay Rs.8984.44 ps. It is averred that one of the partners of the defendant-firm, Bhimandas Ramandas, came to Ahmedabad on March 22, 1975 and agreed to pay the said amount due to the dissolved firm, Kailashchandra Tikemadas, and, had, accordingly, executed a writing by the defendants. As the said amount was not paid despite repeated demands, the plaintiff filed Civil Suit No.1756 of 1976 against the defendants for recovery of Rs.10,768.16 ps along with interest of Rs.1783.72 ps.

3. No written statement appears to have been filed by the original defendants. Learned trial judge framed issues at Exh.24. In support of his case, the plaintiff's witness, Jairamdas Hasanand, was examined at Exh.27. The plaintiff also produced documentary evidence such as certificate of registration of the plaintiff-firm at Exh.28, and dissolution deed at Exh.29 of firm of Kailashchandra Tikemadas. Learned trial judge, on appreciation of oral as well as documentary evidence, held that evidence produced by the plaintiff did not prove that the defendants had to pay Rs.8984.44 ps to firm of Kailashchandra Tikemadas. It was further held by learned trial Judge that the plaintiff had failed to prove that the defendants had agreed to pay Rs.8984.44 ps to the plaintiff due to the dissolved firm of Kailashchandra Tikemadas. On the abovereferred to conclusions, learned trial judge dismissed the plaintiff's suit, which has given rise to filing of this appeal by the original plaintiff-appellant.

4. Learned counsel for the appellant has taken me through the record of the case. Learned counsel for the appellant has submitted that learned trial judge has not taken into consideration evidence of the plaintiff which showed that amount of Rs.8984.44 remained due to the plaintiff-firm as dues of dissolved firm of Kailashchandra Tikemadas. The contention raised by learned counsel for the appellant does not deserve any merit. The learned trial judge, after going through oral as well as documentary evidence, had come to the

conclusion that the documentary evidence produced by the plaintiff did not inspire confidence and did not prove that amount of Rs.8984.44 ps was due to be recovered from the defendant-firm. The learned trial judge has further held that there was no independent and satisfactory evidence to prove that the defendants owed Rs.8984.44 to the dissolved firm of Kailashchandra Tikemadas and that the defendants had agreed to pay the said amount to the plaintiff-firm. I do not find any illegality or error committed by the learned trial judge in dismissing the plaintiff's suit as the plaintiff had not produced satisfactory evidence to prove dues of the firm of Kailashchandra Tikemadas. I have gone through the record and proceedings of the case and I do not find any merit in this appeal and this appeal deserves to be dismissed.

5. For the foregoing reasons, the appeal fails and is dismissed with no order as to costs.

(swamy)